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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13

14 UNITED STATES ex rel. NYOKA LEE
and TALALA MSHUJA,

15 Plaintiffs,

16 v.

17 CORINTHIAN COLLEGES et al.,

18 Defendants.

19 Case No. CV 07-01984 PSG (MANx)

20 **DEFENDANT ERNST & YOUNG
LLP'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS
MOTION TO DISMISS**

21 [Defendant's Notice of Motion and
Motion to Dismiss, Declaration of
Laurence A. Weiss, and [Proposed] Order
filed concurrently herewith]

22 Judge: Hon. Philip S. Gutierrez

Place: Courtroom No. 790

Date: Apr. 2, 2012

Time: 1:30 p.m.

1 Pursuant to Federal Rule of Evidence 201, defendant Ernst & Young LLP
 2 (“EY”) hereby requests that the Court take judicial notice of the following exhibits in
 3 support of its concurrently filed Motion to Dismiss Pursuant to Federal Rules of Civil
 4 Procedure 9(b) and 12(b)(6). Rule 201 of the Federal Rules of Evidence provides that
 5 a court may take judicial notice of facts that are “not subject to reasonable dispute” in
 6 that they are either: (1) “generally known within the territorial jurisdiction of the trial
 7 court,” or (2) “capable of accurate and ready determination by resort to sources whose
 8 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Moreover, in
 9 connection with a motion to dismiss, a court may take judicial notice of documents that
 10 are referred to in the plaintiff’s amended complaint and that are central to the
 11 plaintiff’s claims. *See, e.g., Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

12 **Exhibit A** – Exhibit A is a true and correct copy of August 25, 2008 reports
 13 entitled Report of Independent Registered Public Accounting Firm, and Report on
 14 Internal Control Over Financial Reporting and on Compliance and Other Matters
 15 Based on an Audit of the Consolidated Financial Statements Performed in Accordance
 16 with *Government Auditing Standards*, issued by EY to The Board of Directors of
 17 Corinthian Colleges, Inc. This is an exemplar of the financial reports issued to
 18 Corinthian Colleges, Inc. The Court may take judicial notice of these documents
 19 because they are referred to in the Amended Complaint, and are central to Relators’
 20 claims. *See, e.g., Compl. ¶¶ 20, 22. See also Marder*, 450 F.3d at 448.

22 **Exhibit B** – Exhibit B is a true and correct copy of a Form 10-K/A filing
 23 submitted to the Securities and Exchange Commission (“SEC”) for Corinthian
 24 Colleges, Inc., for the fiscal year ended June 30, 2006. The Court may take judicial
 25 notice of this document as it is a public filing and is readily available. *Lee v. City of*
 26 *Los Angeles*, 250 F.3d 668, 688-89 (9th Cir.2001) (“a court may take judicial notice of
 27 ‘matters of public record’”); *In re Syntex Secs. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996)
 28 (taking judicial notice of annual SEC filings in context of a motion to dismiss).

1 **Exhibit C** – Exhibit C is a true and correct copy of an October 30, 2002
 2 Memorandum from William D. Hansen, Department of Education Deputy Secretary, to
 3 Terri Shaw, Department of Education Chief Operating Officer, Federal Student Aid,
 4 with the following subject: Enforcement policy for violations of incentive
 5 compensation prohibition by institutions participating in student aid programs.
 6 Because this document reflects a policy memorandum of the Department of Education,
 7 it is subject to judicial notice. *See Brown v. Valoff*, 422 F.3d 926, 931 n.7, 933 n.9,
 8 938-39, 941-42 (taking judicial notice of operations manual and administrative bulletin
 9 of California Department of Corrections for purposes of noticing procedures generally
 10 followed by Department). Moreover, this document is publicly available from the
 11 Department through the Freedom of Information Act (“FOIA”), and is therefore also
 12 properly the subject of judicial notice. *See United States v. Ritchie*, 342 F.3d 903, 909
 13 (9th Cir. 2003) (“Courts may take judicial notice of some public records, including the
 14 records and reports of administrative bodies.”) (quotation marks omitted); *Krzesniak v.*
 15 *Cendant Corp.*, No. C 05-05156 MEJ, 2007 U.S. Dist. LEXIS 18811, at *6-8 (N.D.
 16 Cal. Feb. 27, 2007) (granting unopposed request to take judicial notice of documents
 17 received through FOIA); *United States v. Atchison, Topeka & Santa Fe R.R. Co.*, No.
 18 CV-F-92-5068, 2003 U.S. Dist. LEXIS 23130, at *7-8 (E.D. Cal. June 25, 2003)
 19 (taking judicial notice of documents received through FOIA).

20 **Exhibit D** – Exhibit D is a true and correct copy of an October 5, 2005 Order
 21 promulgated by the U.S. District Court for the Northern District of California granting
 22 a Motion to Dismiss against Relator’s counsel in a prior case. The relevance of that
 23 Order to this proceeding lies in specific pleading practices which that court expressly
 24 held to be insufficient to satisfy Federal Rule of Civil Procedure 8, and which are
 25 substantially duplicated throughout the Relators’ new amended complaint (i.e.,
 26 Relators’ futile attempt to mask the fatal vagueness of their allegations by liberally
 27 peppering the complaint with the term “solely.”) As matters of public record, all prior
 28

1 court filings and orders that are relevant to the current proceedings are properly the
2 subject of judicial notice. *See Betker v. U.S. Trust Corp. (In re Heritage Bond Litig.)*,
3 546 F.3d 667, 670 n. 1 (9th Cir.2008) (“This court may take notice of proceedings of
4 other courts . . . if those proceedings have a direct relation to matters at issue.” (quoting
5 *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
6 (9th Cir.1992)); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir.2007) (same); *Lee*,
7 250 F.3d at 688-89 (“a court may take judicial notice of ‘matters of public record’.”))

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9 DATED: January 20, 2012

GIBSON, DUNN & CRUTCHER LLP

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11 By: /s/ James L. Zelenay, Jr.
12 James L. Zelenay, Jr.

13 Attorneys for Defendant,
14 Ernst & Young LLP